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IN THE

Supreme Court of the United States

October Term 1958
No. [redacted] 135

CHARLES JOHN FUNK,

Petitioner,

vs.

DAVID K. FUNK, ARTHUR L. FUNK and ALBERT C. FUNK,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Arizona.

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IN THE

Supreme Court of the United States

May Term, 1968
No. .....

CHARLES JOHN FUNK,

Petitioner,

vs.

DAVID K. FUNK, ARTHUR L. FUNK and ALBERT C. FUNK,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Arizona.

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Arizona in the above-entitled case on the 20th day of February, 1968.

Citations to Opinions Below.

The Arbitration Award is unreported and is printed in Appendix, *infra,* pp. 1-3. The dissenting opinion to the arbitration award is also unreported and is printed in Appendix, *infra,* pp. 22-34. The Judgment of the Superior Court of Maricopa County, State of Arizona is also unreported, and is printed in Appendix *infra,* pp. 35-38. The Opinion of the Court of Appeals (Division I) State of Arizona, is printed in Appendix *infra,* pp. 39-48, and is reported in 434 P. 2d 529, and

6 Arizona Appeals 527. The opinion of the Supreme Court of the State of Arizona is unreported and was the denial of a Petition for Review of the decision of the Court of Appeals (Division I) State of Arizona.

Jurisdiction.

The Arbitration Award was entered on the 19th day of June, 1963, Appendix, pp. 4-12, *infra*. The Judgment of the Superior Court of the State of Arizona, Maricopa County, was entered on the 28th day of October, 1964, Appendix, pp. 35-38, *infra*. The Judgment of the Court of Appeals (Division I) of the State of Arizona, was entered on the 4th day of December, 1967, Appendix, pp. 39-48, *infra*. Rehearing was denied on the 5th day of January, 1968. Petition for Review to the Supreme Court of the State of Arizona was denied on the 20th day of February, 1968. The jurisdiction of this Court is invoked under *28 U.S.C. Section 1254(1)*.

Question Presented.

Whether a partnership Arbitration Award which determines the value of partnership assets can also additionally forcibly require a litigant to sell his separate admitted non-partnership property to the remaining partners?

Statement.

An arbitration proceeding was commenced based upon a partnership agreement which specified that the departing partner's share of the assets of the partnership would be purchased by the remaining partners for a price determined by three (3) Arbitrators Appendix pp. 13-21, *infra*. The partnership agreement specified

what the partnership property consisted of 47,500 Shares of Western Racing Inc. stock and four dog racing Management contracts. At the commence of the arbitration proceeding the remaining partners refused to go through with the prearranged partnership agreed arbitration proceeding unless a further submission stipulated was executed by the parties to the arbitration. The further submission stipulated read as follows:

> "September 17, 1962
>
> It is stipulated that evidence shall be introduced before the arbitrators; that upon a majority of the arbitrators submitting a written award, such award shall be filed in Charles John Funk, Plaintiff, vs. David K. Funk, Arthur L. Funk and Albert C. Funk, defendants, No. 129497, in the Superior Court of the State of Arizona in and for the County of Maricopa and shall have the same force and effect as though entered by a judge of said Superior Court; said judgment shall be signed by a Superior Court judge and all parties hereto waive their right to a new trial or appeal to any court."

During the proceeding all the evidence adduced that Charles John Funk owned separately and not involved in the partnership an interest in certain Greyhound Parks of Arizona stocks and bonds, along with a separate and non-partnership interest in certain Washington Land Corporation stock. These stocks and bonds were admitted by all litigants to be non-partnership asset. This was Charles John Funk's separate property.

The arbitrators in their award required Charles John Funk to sell his non-partnership and separate assets, namely, Greyhound Parks of Arizona stocks

and bonds and Washington Land Corporation stock, to the remaining partners in spite of the fact that no evidence existed or was introduced in the entire proceeding that these Greyhound Parks of Arizona Stocks and bonds and Washington Land Company stock was a part of the partnership assets. The trial court, on a Petition to Modify the Arbitrators' Award, struck the requirement that the departing partner sell his separate and non-partnership Greyhound Parks of Arizona stocks and bonds, and Washington Land Company stock from the arbitrators' award.

The Court of Appeals (Division I) of the State of Arizona reversed the trial court's decision and ordered Charles John Funk to sell his separate and non-partnership stocks and bonds of Greyhound Parks of Arizona and separate and non-partnership stock in Washington Land Company to the remaining partners by reinstating the entire arbitration award.

On rehearing, the Court of Appeals (Division I) of the State of Arizona denied the same.

On Petition for Review to the Supreme Court of the State of Arizona, the Petition for Review was denied.

Reason for Granting Writ.

1. The Decision of the Court of Appeals (Division I) of the State of Arizona, in *Funk v. Funk,* 434 P. 2d 529, 6 Arizona App. 527, applying what it considered to be sound arbitration law, required the Appellant herein to dispose of his non-partnership assets which were clearly outside of the Submission Agreement. This conflicts with the "due process" and "obligation of contracts" provision of the United States Constitution.

2. Clearly, the question presented is of importance in the administration of arbitration proceedings which have pervaded our country today and which are a vehicle which is making substantial inroad into court delays. The settlement of the question by this Court is plainly in the public interest since it is likely to arise in many arbitration proceedings, including the hundreds now pending before the American Arbitration Association, which has offices throughout the country.

3. The Decision of the court below is believed to be erroneous. Moreover, the decision below properly conflicts with applicable decisions of this Court. It is generally agreed that this court recently recognized, in *Dombrowski v. Eastland,* ..... U.S. ....., 18 L. Ed. 2d 577, 87 S. Ct. ..... (1967) that individual property rights are still entitled to constitutional protection.

Conclusion.

For the foregoing reason, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

ALAN PHILIP BAYHAM,
HENRY L. ZALUT, and
LEVEN B. FERRIN,
By LEVEN B. FERRIN,
Attorneys for Petitioner.

Dated this 17th day of May, 1968.